



JON S. CORZINE  
Governor

MAR 21 2006

## New Jersey Office of the Attorney General

Division of Consumer Affairs  
New Jersey State Board of Physical Therapy Examiners  
124 Halsey Street, 6<sup>th</sup> Floor, Newark, NJ 07102



ZULIMA V. FARBER  
Attorney General

KIMBERLY S. RICKETTS  
Director

March 13, 2006

**Mailing Address:**  
P.O. Box 45014  
Newark, NJ 07101  
(973) 504-6455

### By Certified and Regular Mail

Jeremy Devine, P.T.  
811 Pennsylvania Avenue  
Lyndhurst, New Jersey 07071

Re: Offer of Settlement In Lieu of Filing a Formal Disciplinary Complaint

Dear Mr. Devine:

This letter is to advise you that the New Jersey State Board of Physical Therapy Examiners (the "Board") has had an opportunity to review information concerning a malpractice settlement made to D.B. The malpractice information revealed that D.B. received a burn from a tens unit while receiving physical therapy at HealthSouth. The Board reviewed the physical therapy treatment that you rendered to D.B. from August 14, 2000 through October 17, 2000 at HealthSouth located in Fort Lee, NJ.

Upon further review of the billing and the treatment records of D.B. and the testimony that you provided to the Preliminary Investigation Committee (Committee) of the Board at an inquiry that you attended Pro. Se. on September 13, 2005, the Board determined that you were the primary physical therapist for D.B. D.B.'s initial evaluation and treatment began on August 14, 2000. The second treatment occurred on August 16, 2000. The record reflects that on August 16, 2000 the patient received cryotherapy and T.E.N. stimulation for 15 minutes each along with therapeutic exercise. The note for this date does not indicate that the therapist observed the burn or was made aware of the patient's complaint of a burn nor that he informed the patient to see his physician. It was your testimony that you did not recall being informed by the patient on that date and that the patient could have informed any of the staff members regarding the burn. The patient note for August 18, 2000 contains a notation in the daily comments section stating "noted development of blister following last visit" and further described under observations a "1" diameter abrasion type wound LT lateral knee which pt attributes to e-stim last Rx. Began as a blister, became fluid filled and popped yesterday leaving current abrasion type wound." The assessment area section of the patient note further indicated that you "gave pt band aids for wound" and the daily plan was to "continue with current rehabilitation program and "monitor wound LT knee." The August 21, 2000 note indicates that you noted that the "wound LT knee scabbed over and healing well." The August 23, 2000 note

made by physical therapist, Julie Sine, P.T. indicated that she observed that the "wound left lateral knee: 3/4 diameter with good skin proliferation...open area kept covered throughout treatment." Julie Sine's patient note for August 25, 2000 also indicates in the observation section "wound left lateral knee: 1/2 inch diameter with good skin proliferation." On August 28, 2000 your note indicated that the patient stated "I think my left knee is swollen today" and you observed "pitting edema." However, the August 28<sup>th</sup> note does not contain any changes in the wound measurements or any indications of changes in exercise despite the patient's complaint and the recognition of the edema. The August 30, 2000 note indicates subjective findings that the patient indicated that "the burn is still painful but diminishing." Your observations indicated that burn size was an inch in diameter...."healing well with pink tissue in center covered by very thin layer of necrotic tissue. Depth of wound has also decreased and there is less drainage. Your plan noted that the "burn healing well, but is painful with PROM flexion. Pt is applying peroxide at home to keep wound clean and covering with a band aid. JD" The September 1, 2000 note indicated an increase in pain to the left knee over the area of the burn. The September 5, 2000 note repeats that the wound is healing and is approximately 1/2 inch in diameter. The Patient ceased attending physical therapy after the September 6, 2000 visit. September 11, 2000 patient did not attend physical therapy. October 17, 2000 a discharge summary was prepared.

The Board noted upon a review of the patient record that over the course of the ten (10) visits the exercise regimen of this patient did not change. In addition, eleven problems with associated goals were identified. Seven related to impairment issues and four related to functional issues. However, the only outcomes reported were muscle performance and range of motion. The goals dealing with issues of gait, balance, transfers, recreational capacity were not addressed in interventions and were not reflected in the outcomes. The patient records also contained an inconsistency between the daily notes and the progress notes. As you testified the computerized daily notes carried information from previous input dates unless a therapist specifically changed them. Thus, the daily notes did not reflect the status of the patient accurately and the progress notes to the physician indicated that the patient had made more progress than the daily notes reflected.

Upon review of all available information and your testimony at the inquiry, the Board has preliminarily found that probable cause exists to support a finding that your conduct represented professional misconduct in violation of N.J.S.A. 45:1-21(e) and N.J.A.C. 13:39A- 2.2(b) in that the record of D.B. demonstrated that you did not continually monitor the patient's response to care and modify the therapeutic interventions in a manner consistent with achieving the therapeutic goals, many of the goals established were not addressed and the exercises were not progressed or modified at any time during the course of treatment. Additionally, the record is void of any documentation that confirms that you communicated with the patient's physician when the burn was noted or concerning the care of the burn. The testimony provided indicated that the patient handled all the wound care. The Board noted that the documentation about the nature of the burn and the care of the burn was scanty. Despite the patient's subjective complaints that he experienced pain in the burn area none of the exercise regime was changed or modified to accommodate this issue. The Board also found that the patient records were not prepared in compliance with N.J.A.C. 13:39A-3.1(a), and (c) 7,9,11 and 13 in that the plan

of care establishing measurable goals of intervention with stated time frames, the frequency and expected duration of intervention was not presented for all goals addressed, progress notes were not accurate and the discharge summary did not reflect the outcomes of the physical therapy interventions as the only progress outcome provided was a minimal change in range of motion and all other figures were well within the margin of error for the range of motion measurements. The patient bills did not include the licensee license number in violation of N.J.A.C. 13:39A-3.4(e) as the licensee is responsible for reviewing and knowing the fees that are charged by a facility. Additionally, your failure to prepare a discharge summary and your failure to include your signature or initials on the patient record is a violation of N.J.A.C. 13:39A-3.1(c) 10 and 13.

At this juncture, the Board has preliminarily concluded that the above violations are sufficient to warrant the initiation of formal disciplinary proceedings against you. Notwithstanding that decision, however, the Board has determined that it will first offer you an opportunity to settle this matter, and thereby avoid the initiation of disciplinary proceedings, should you consent to:

1. Cease and desist in the future from failing to maintain records that accurately reflect the progress of the patient and that indicate modifications of the therapeutic interventions in a manner that are consistent with achieving the therapeutic goals for physical therapy treatment at the facility where you are employed as required by N.J.A.C. 13:39A-2.2(b).
2. You shall review the requirements set forth in the Board's patient records regulation at N.J.A.C. 13:39A-3.1 and make sure that the minimum requirements of that regulation are satisfied in all of the patient records that you prepare in the future.
3. You are cautioned to comply with the requirement that your signature or initials appear on the patient record as required by N.J.A.C. 13:39A-3.1(c) 10 and 13.
4. Pay a penalty in the amount of \$2500.00, for your professional misconduct which arose from your failure to monitor the patient's response to care and modify the therapeutic interventions accordingly as evidenced by the lack of modification of the treatment regimen to this patient in violation of N.J.S.A. 45:1-21(e) and N.J.A.C. 13:39A-2.2(b) and for the record keeping violations of N.J.A.C. 13:39A-3.1(a), (c) 7, 9, 10 and 13. The penalty is to be paid immediately upon your signing of the acknowledgment at the bottom of this letter by sending a certified check or money order payable to the Board of Physical Therapy Examiners, P.O. Box 45012, Newark, New Jersey 07101 to attention of Susan Gartland, Executive Director.
5. Pay costs in the amount of \$454.50 as reflected in the certification of Susan Gartland, Executive Director of the Board as attached hereto. Costs are to be paid immediately upon signing the acknowledgment by following the mailing instructions as set forth in paragraph 2 above.

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. Upon your signature, this letter will be a matter of public record.

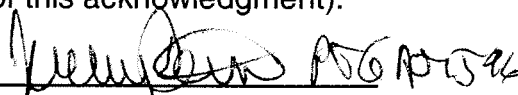
In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of appropriate enforcement action. In such event, you will be afforded an opportunity to defend against the alleged violations. If an evidentiary hearing is deemed warranted the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event formal charges are filed, the Board may assess civil penalties in an amount greater than that herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order, requiring you to reimburse certain monies and/or requiring you to pay costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact Deputy Attorney General, Carmen A. Rodriguez who may be reached at (973) 648-3696.

If you elect to settle this matter presently, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of appropriate enforcement proceedings.

NEW JERSEY STATE BOARD OF  
PHYSICAL THERAPY EXAMINERS

By:   
Susan Gartland  
Executive Director

ACKNOWLEDGMENT: I, Jeremy Devine, P.T., hereby acknowledge that I have read and reviewed the settlement proposal set forth in the above letter. I acknowledge the conduct which has been charged. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record, and that this letter is a public document. I hereby agree to pay a penalty in the amount of \$ 2500.00 plus costs in the amount of \$450.50 which totals \$2,950.50 (to be paid upon signing of this acknowledgment).

  
Jeremy Devine, P.T.

Dated:

cc: Carmen A. Rodriguez, Deputy Attorney General